IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

WP(C).No. 31626 of 2007(M)

CMA.78/2007 of II ADDL. DISTRICT COURT, TRIVANDRUM
OS.183/1985 of II ADDL.SUB COURT,TRIVANDRUM
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PETITIONER:

R.KUNHURAMAN NAIR, S/O.LATE
RAMAN PILLAI, SREEVIHAR, PACHALLOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.V.SOHAN

RESPONDENT:

R.BHASKARAN NAIR, S/O.LATE
RAMAN PILLAI, MUDEECHAZHIKATHU VEEDU,
MUKHATHALA, KOLLAM.

BY ADV. SRI.S.SREEKUMAR
SRI.G.SUDHEER
SRI.V.SURESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.31626/2007 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE REPORT OF THE STATE FORENSIC SCIENCE LABORATORY, TRIVANDRUM, DTD. 27/02/2006.**

EXT.P2: **COPY OF THE PLAINT IN O.S.279/2006 PENDING BEFORE THE HON'BLE SUBORDINATE JUDGE'S COURT, TRIVANDRUM, DTD. 8/06/2006.**

EXT.P3: **COPY OF THE ORDER IN I.A.1014/2007 IN OS.279/2006 ON THE FILE OF THE PRINCIPAL SUBORDINATE JUDGE'S COURT, DTD. 29/05/2007.**

EXT.P4: **COPY OF THE ORDER IN I.A.2353/2007 IN C.M.A.78/2007 ON THE FILE OF THE ADDITIONAL DISTRICT JUDGE'S COURT, TRIVANDRUM DTD. 24/08/2007.**

1ST RESPONDENT'S EXHIBITS:

EXT.R1: **COPY OF THE JUDGMENT IN O.S.NO.183/95 DTD. 29/01/1988 OF THE IIND ADDITIONAL SUB JUDGE, TRIVANDRUM.**

EXT.R1(A): **COPY OF THE JUDGMENT IN A.S.NO.56/1989 DTD. 11/05/2003 OF THIS HON'BLE COURT.**

EXT.R1(B): **COPY OF THE JUDGMENT IN S.L.P.NO.20379-20381/2003 DTD. 17/11/2003 OF THE SUPREME COURT OF INDIA.**

EXT.R1(C): **COPY OF THE ORDER IN I.A.NO.5781/2006 IN O.S.NO.183/1985 DTD. 31/01/2007 OF THE II.ADDL.SUB JUDGE, THIRUVANANTHAPURAM.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 31626 OF 2007

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Dated this the 29th day of November, 2007.

J U D G M E N T

This writ petition is preferred against Ext.P4 order whereby the Addl. District Judge, Thiruvananthapuram has dismissed an application I.A.2353/07 in CMA 78/07. The prayer is to restrain the counter petitioner from executing and prosecuting all proceedings in the main decree in O.S.183/85 on the file of the 2nd Addl. Sub Court, Thiruvananthapuram till the disposal of the CMA. An interim injunction application was filed before the trial Court as well which was dismissed. It is against that decision CMA 78/07 is filed where the present interlocutory application is filed praying for an interim injunction. The prayer in the suit is to set aside the decree obtained in O.S.183/85. It was a suit for specific performance where the present writ petitioner disputed the genuineness of the document. The matter was fought at full length and a decree was passed in favour of the

plaintiff therein confirmed by the appellate court and the Special Leave Petition preferred before the Apex Court was dismissed thereby the decree in O.S.183/85 became conclusive. It is at that stage a criminal proceedings is initiated against the person on the basis of this document and it is stated that a forensic report is obtained wherein there is some point in favour of the present writ petitioner. Two competent courts after a full fledged trial had arrived at a decision regarding the correctness and genuineness of the document and such a finding of the Court cannot be simply brushed aside by a mere institution of the suit. If ultimately the decree in O.S.183/85 which is found liable to be set aside then the remedy available under the CPC is Section 144 CPC for restitution of the property. In order to grant an order of interim injunction there must be a prima facie case, balance of convenience and irreparable injury. Here, the prima facie case is on the other side because they are equipped with valid judgments of competent Courts. Balance of convenience is also in their favour for the reason that though

there is a decree in their favour after a long fight for 22 years and if the decree is not allowed to be executed then it will cause irreparable injury as well. So all the ingredients are more in favour of the defendant rather than in favour of the plaintiff in the suit. Therefore, I decline to exercise jurisdiction under Section 227 of the Constitution of India and confirm the order of the Court below whereby it has dismissed the application for interim injunction. Accordingly, the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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